

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
ORANGE COUNTY DISTRICT COURT DIVISION

15 CVD 0338

ORANGE COUNTY ANIMAL SERVICES,)

Plaintiff,)

v.)

MARILYN KILLE,)

Defendant.)

CONSENT ORDER

THIS CONSENT ORDER (Order) is submitted jointly by the Parties for the approval of and entry by the Court. The Parties submit this Order to resolve fully and finally all claims asserted arising out of or relating to the above entitled matters referred to in the Plaintiff Motion for Issuance of Show Cause Order filed with this Court on January 11, 2018. The Court, having reviewed the matter, hereby makes the following findings of fact:

1. On the afternoon of December 22, 2017, Kate Kennedy of Chapel Hill, North Carolina, observed two horses belonging to Defendant leave Defendant's property at 219 Old Fayetteville Road and enter the middle of the public roadway, stopping traffic in both directions on Old Fayetteville Road. Ms. Kennedy helped to herd the horses into a nearby field, and called 911. In support of Ms. Kennedy's testimony, the Court received Plaintiff's
2. Animal Control Officer Michael Hess with Orange County Animal Services responded on December 22, 2017, to a location at or near 219 Old Fayetteville Road. ACO Hess observed two horses on Defendant's property.
3. ACO Hess responded on January 2, 2018, to a location at or near 219 Old Fayetteville Road in order to investigate a complaint unrelated to Defendant's horses. ACO Hess observed two horses on Defendant's property. The two horses were the same horses as that ACO Hess observed when responding to Defendant's property on December 22, 2017. During the course of his investigation, ACO Hess identified these horses as belonging to Defendant.

4. On March 1, 2018, ACO Hess confirmed that no equines appeared to reside on Defendant's property.

Based on the foregoing, the Court further finds as fact:

1. That on April 9, 2015, the Honorable Judge Beverly Scarlett found that Defendant repeatedly and continually violated the public nuisance provisions of the Orange County Animal Control Ordinance, and issued an Order for Defendant to maintain her horses on her property within industry standard fencing and that when off the property the horses must be restrained by a competent adult using industry standard methods, among other things.
2. That following the execution of the April 9, 2015 Order, Defendant's horses continued to be reported off Defendant's property in violation of the Court's Order and the Orange County Animal Control Ordinance.
3. That on November 16, 2016, based on Defendant's repeated and continuous failure to maintain her horses within her fenced property as required by the April 9, 2015 Order and the Public Nuisance provisions of the Orange County Animal Control Ordinance, the Honorable Judge Charles Anderson issued an Order placing Defendant's horses in possession of a Receiver, Dr. Tom Daniel of Southern Pines Equine Associates. This Order held Defendant in continuing civil contempt, and ordered that Defendant could purge this contempt by reviewing video footage of her property with Dr. Daniel and bringing her property up to the standards for care, sheltering, and confinement of horses recommended by Dr. Daniel and approved by the Court, and by not obtaining any new or additional horses until she had done so.
4. That, following placement of her horses in the possession of the Receiver, the Receiver attempted to have a conversation with the Defendant about her horses, but the Defendant was not cooperative.
5. That, on December 21, 2016, the Honorable Judge Anderson adopted the Receiver's finding that the Defendant's horses were not adequately secured on Defendant's property so they cannot roam and should not be returned to the Defendant as the Court's own. Judge Anderson issued another Order, concluding that it was not in the best interest of the

horses or the public for the horses to be returned to the Defendant, and vested ownership and title of Defendant's horses in Orange County for the purpose of finding suitable permanent placement for the horses. The Order further ordered that all Orders entered previously continue to be in effect.

Based on the findings of fact, the Court concludes as a matter of law:

1. This Court has jurisdiction over the subject matter and parties hereto.
2. That the Orders entered by the Court on April 9, 2015, and November 16, 2016 Orders against Defendant are still in force.
3. That the purpose of the April 9, 2015 Orders and November 16, 2016 Orders may still be served by compliance with the Orders.
4. That the Defendant was found to have violated the Order entered April 9, 2015.
5. That the Defendant was found to have violated the Order entered November 16, 2016.
6. That Defendant failed to comply with both the April 9, 2015 Order and November 16, 2016 Order.
7. That the Defendant is able to comply with the Orders or is able to take reasonable measures to enable her to comply with the Orders.
8. That, in addition to the violation of the Orders, Defendant violated Orange County Animal Control Ordinance section 4-45 by creating a public nuisance to wit: allowing horses to be at large off her property.
9. That Defendant's failure to restrain equines on her property posed a risk of harm to the public at large and to the horses as a result of the horses' continued and repeated presence on and about a public vehicular area.
10. That the confinement needs of equines on Defendant's property were not met, and the previous contempt of this Court's Orders has exacerbated the risk of equines being struck by a vehicle while off Defendant's property and to the public safety as a result of being involved in such an accident.
11. In the event that any horses reside on Defendant's property, that it is in the best interest of the public safety and the safety of Defendant's horses that Defendant be divested of title to any horses she currently owns or possesses and that Defendant henceforth is prohibited from owning or possessing horses and from keeping horses on her property, in order to

avoid or minimize the risk of the horses and the public as a result of Defendant's continuing contempt.

12. Pursuant to this Court's broad equitable powers and authority under N.C. Gen. Stat. § 5A-21 et al, Civil Contempt, in the event that any horses reside on Defendant's property, it is necessary and appropriate to immediately divest Defendant of title to any horses currently owned or possessed by her that reside on the property and to prohibit the Defendant from owning or possessing horses or from keeping horses on Defendant's property.

IT IS THEREFORE ORDERED:

1. That Plaintiff and its agents shall be authorized to enter Defendant's property, search the premises and area or structures on the premises related to horses, and seize any horses on the property one time within the next four weeks, at a time and date to be agreed-upon by both Parties, and once annually thereafter; and
2. That the Orange County Sheriff's Department is respectfully directed to accompany and assist Plaintiff with the enforcement of provisions of this Order, in order to effect its terms in a peaceful and efficient manner; and
3. That ownership and title to any horses seized by Plaintiff be immediately vested in Orange County for the purpose of finding suitable permanent placement for the horses that may include, but is not limited to auction, sale, adoption, or placement in a rescue home; and
4. That the County is authorized to disposition the horses in a manner that is humane and provides for the best interest of the horses; and
5. That any costs of care of horses seized by Plaintiff be assessed against the Defendant until the County is divested of title to the horses; and
6. That Defendant be prohibited from obtaining or possessing new or additional horses in Orange County; and
7. That Defendant be prohibited from keeping or permitting any horses on her property; and
8. That all Orders entered previously continue to be in effect; and
9. That the Court retains jurisdiction over this matter for the purpose of enforcing this Consent Order and all previously entered Orders; and

10. This Court shall retain jurisdiction of this matter solely for the purpose of enforcing the terms of this Consent Order.

So ordered this the 2nd day of March, 2018.

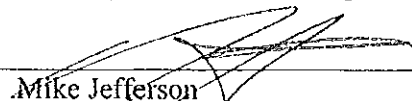


The Honorable Samantha Cabe
District Court Judge Presiding

WE CONSENT TO THE ENTRY OF THIS ORDER:

Orange County, North Carolina

By: 
Anne Marie Tosco
Attorney for Plaintiff Orange County Animal Services

By: 
Mike Jefferson
Attorney for and on behalf of Marilyn Kille